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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ALVIN C., a Person Coming Under  
the Juvenile Court Law.

B237615  
(Los Angeles County Super. Ct.  
No. CK89700)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.C.,

Defendant and Appellant.

APPEAL from the judgment of the Superior Court of Los Angeles County, Tim Saito, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Melinda White Svec, Deputy County Counsel, for Plaintiff and Respondent.

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E.C. (father) appeals from the judgment of November 11, 2011, declaring his son, Alvin, a dependent of the court and removing him from father's custody, after finding he was abused or at risk of abuse under Welfare and Institutions Code section 300, subdivisions (b) (physical harm), (d) (sexual abuse), and (j) (sibling abuse).<sup>1</sup> In his appeal from the judgment and orders, father contends substantial evidence does not support an inference that his sexual abuse of C. places Alvin at risk of sexual or physical abuse and does not support the removal order. We conclude substantial evidence supports the jurisdictional findings and removal order and affirm the judgment.

### **STATEMENT OF FACTS AND PROCEDURE**

Alvin was born in 2004 to A.R. (mother) and father, who were married in 2002 and lived together.<sup>2</sup> Also living in the home were Alvin's half-siblings, including C., born in 1999 to mother and a different man. Father treated Alvin and C. as his own children. The family slept in one room. On eight occasions in August and early September 2011, father sexually molested C. by fondling and digitally penetrating her vagina and anus, which tore C.'s anus, caused redness and abrasion of the vagina, and caused pain and bleeding. Father threw C. on the bed and held her face down during the molestations. The molestations were painful, but father did not comply with C.'s requests to stop.

The abuse began on the day mother started working outside the home for the first time in the marriage. According to C.'s statement to the police, "[C.] and [Alvin] were in the bedroom, playing a game that involved falling onto the bed. During their play, they were interrupted by [father] who suddenly grabbed [C.] by the waist [and] tossed her onto the bed where [she] landed face down. He then jumped onto the bed next to [her] where

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<sup>1</sup> Hereinafter, all statutory references will be to the Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> Father was found to be Alvin's presumed father.

he took a blanket and covered her body. Not saying a word, [father] put his hand inside [C.'s] pants and underwear and began rubbing [C.'s] vagina. [C.] tried to move away but [father] continued to pull her back toward him.” Father released C. after Alvin told him to stop and let her go.

Mother reported the abuse to the police after C. disclosed it to her. The Department of Children and Family Services (Department) detained the children with mother, and a section 300 petition was filed. Father denied he molested C.

On November 11, 2011, the dependency court declared Alvin a dependent of the court based on sustained allegations under section 300, subdivisions (b), (d), and (j) that father sexually abused C., which endangered Alvin’s physical health and safety and placed him at risk of harm, damage, danger, and sexual abuse. Alvin was placed in home-of-parent mother under Department supervision, with father not to reside in the home. Custody was taken from father. Father was ordered to participate in parenting and individual counseling that addressed his sexual abuse. Father was awarded monitored visits with Alvin.

## **DISCUSSION**

Father contends substantial evidence does not support the findings Alvin was a child described by section 300, subdivisions (b), (d), and (j) or the order removing Alvin from his care under section 361, subdivision (c)(1). We disagree with the contentions.

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent

judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Section 300, subdivision (d) describes a child who “has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in [s]ection 11165.1 of the Penal Code,[<sup>3</sup>] by his or her parent[.]”

Section 300.2 provides in pertinent part: “[T]he purpose of the [juvenile court law] relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.”

Substantial evidence supports the finding that Alvin was sexually abused within the meaning of section 300, subdivision (d), in that father’s sexual abuse of C. in Alvin’s presence constituted sexual abuse of Alvin, within the meaning of Penal Code section 647.6, subdivision (a)(1).<sup>4</sup> Penal Code section 647.6, subdivision (a)(1) does not require a touching; it requires “*an act objectively and unhesitatingly viewed as irritating or disturbing*, prompted by an abnormal sexual interest in children.” (*People v. Lopez* (1998) 19 Cal.4th 282, 290.) “The forbidden annoyance or molestation is not concerned with the child’s state of mind, but rather refers to the defendant’s objectionable acts that constitute the offense. [Citation.] [¶] Accordingly, to determine whether the [molester’s] conduct would unhesitatingly irritate or disturb a normal person, we employ an *objective* test not dependent on whether the child was in fact irritated or disturbed.”

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<sup>3</sup> “Sexual abuse” includes rape (Pen. Code, §§ 261, 261.5, subd. (d), 264.1), incest (Pen. Code, § 285), sodomy (Pen. Code, § 286), lewd or lascivious acts (Pen. Code, § 288), oral copulation (Pen. Code, § 288a), sexual penetration (Pen. Code, § 289), child molestation (Pen. Code, § 647.6), sexual penetration or contact, and masturbation in the child’s presence. (Pen. Code, § 11165.1.)

<sup>4</sup> Penal Code section 647.6 provides in pertinent part: “(a)(1) Every person who annoys or molests any child under 18 years of age shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.”

(*Ibid.*) Moreover, the victim need not be the perpetrator's target, so long as the victim observed the offending behavior. (*People v. Phillips* (2010) 188 Cal.App.4th 1383, 1396 ["Penal Code section 647.6, subdivision (a)(1) does not . . . require proof that the victim and the perpetrator engage in conduct with each other. Instead, Penal Code section 647.6, subdivision (a)(1) criminalizes conduct that molests or *annoys*, suggesting that the victim can play an entirely passive role and that the ultimate victim or victims need not be the target of the actions."].)

Under the statute's objective test, father's conduct in Alvin's presence was disturbing, without regard to whether six-year-old Alvin understood the sexual nature of what father was doing to C. Because Alvin observed the incident, it did not matter that father did not sexually engage with Alvin personally. This is substantial evidence father molested Alvin within the meaning of Penal Code section 647.6, subdivision (a)(1).

As father's sexual abuse of C. in Alvin's presence constituted molestation of Alvin, in violation of Penal Code, section 647.6, subdivision (a)(1), substantial evidence supports the finding father sexually abused Alvin within the meaning of section 300, subdivision (d). (Compare *In re Karen R.* (2001) 95 Cal.App.4th 84, 89-90 [son was victim of child molestation under Pen. Code, § 647.6, and came within § 300, subd. (d), where he witnessed father, who had raped female sibling, physically abusing female sibling when she complained of the rape]; *In re Alexis S.* (2012) 205 Cal.App.4th 48, 55 [sexual abuse of female sibling is not substantial evidence the male siblings were sexually abused, where they were not present when the sexual molestation of the female sibling occurred].)

As jurisdiction over Alvin was properly established based on evidence he was sexually abused under section 300, subdivision (d), we need not address the findings challenged by father that Alvin was at risk of abuse under section 300, subdivisions (b), (d), and (j). (*In re Shelly J.* (1998) 68 Cal.App.4th 322, 330; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of

the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Nonetheless, we will address father’s contentions that substantial evidence does not support the findings Alvin is at risk of abuse under section 300, subdivisions (b), (d), and (j). We conclude the findings are supported by substantial evidence.

The Legislature has determined that siblings of sexually abused children face a heightened risk of harm under section 300, subdivisions (a) [physical harm inflicted nonaccidentally], (b) [neglect], (c) [emotional harm], and (d) [sexual abuse] from contact with the abuser, whether the siblings are of the same gender as the abused child or not. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1347; *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1415, fn. 5.) (See Stats. 1999, ch. 417, § 1; § 355.1, subd. (d);<sup>5</sup> *In re John S.* (2001) 88 Cal.App.4th 1140, 1145.) Because father does not challenge the finding he sexually molested C., that molestation is conclusively determined and not reviewable. (See, e.g., *In re Megan B.* (1991) 235 Cal.App.3d 942, 950 [a jurisdictional finding in an appeal from a dispositional judgment is final and not reviewable].) Accordingly, the legislative determination that siblings of sexually molested children are at heightened risk of abuse by the molester applies in this case.

The facts father denied he molested C. and had not completed counseling for sex abuse perpetrators indicate he was not rehabilitated. He started abusing C. on the very

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<sup>5</sup> Section 355.1, subdivision (d) provides in pertinent part: “Where the court finds that . . . a parent . . . who resides with, or has the care or custody of, a minor who is currently the subject of the petition filed under Section 300[:] (1) has been previously convicted of sexual abuse[,] (2) has been previously convicted of an act in another state that would constitute sexual abuse[,] (3) has been found in a prior dependency hearing . . . to have committed an act of sexual abuse, or (4) is required, as the result of a felony conviction, to register as a sex offender[,] that finding shall be prima facie evidence in any proceeding that the subject minor is a person described by subdivision (a), (b), (c), or (d) of Section 300 and is at substantial risk of abuse or neglect. The prima facie evidence constitutes a presumption affecting the burden of producing evidence.”

day mother began working outside the home, for the first time in the marriage, because he was unable to support the family. He molested C. frequently for the next three weeks. It could reasonably be inferred that the molestation was a response to stress caused by these circumstances. The stressful circumstances surrounding the molestations still existed at the time of the hearing and were capable of recurring. The foregoing facts reasonably indicate there was a substantial risk father would reoffend.

The abuse included penetrating C.'s anus. This indicates that father's victims did not necessarily have to be female for him to target them sexually, and the risk he posed was not limited to girls. (Compare *In re Maria R.* (2010) 185 Cal.App.4th 48, 67 (*Maria R.*); *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 197-198 (*Rubisela E.*) [sexual molesters will not molest children generally, but only children of one gender, absent evidence of a sexual interest in children of both genders].)<sup>6</sup> Moreover, the fact father considered both C. and Alvin his children equally, even though C. was his stepchild and Alvin was his natural child, indicates the risk he posed was not limited to his stepchild. We conclude the record contains ample substantial evidence for a reasonable trier of fact to conclude Alvin was at risk of sexual harm from father.

Substantial evidence supports finding Alvin is at substantial risk of being physically abused by father under section 300, subdivision (b), which describes in pertinent part a child who has suffered or is at substantial risk of suffering serious physical harm or illness as a result of "the failure or inability of [the] parent or guardian to adequately supervise or protect the child[.]"

The sexual assaults here involved physical violence and bodily harm and the fact father accomplished the molestations by force, not persuasion, indicates a propensity to unleash brute power in order to exercise control. Father's denial and lack of

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<sup>6</sup> *Maria R.* and *Rubisela S.* may be distinguished from this case on the basis that the female siblings in those cases were molested only on their female "private parts," whereas C. was molested on her anus also. (E.g., *Maria R.*, *supra*, 185 Cal.App.4th at p. 54; *Rubisela S.*, *supra*, 85 Cal.App.4th at p. 186.) In any event, we find no legislative policy or other basis for a presumption that a child molester's sexual interest is gender-specific unless proved otherwise.

rehabilitation creates a risk he will use excessive physical violence again. This is substantial evidence Alvin is at risk of physical harm by father under section 300, subdivision (b).

Section 300, subdivision (j) provides in pertinent part: “The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” “[S]ection 300, subdivision (j), does not limit the grounds of dependency adjudication for a child whose sibling has been abused to the same subdivision of section 300 that applies to that sibling.” (*Maria R.*, *supra*, 185 Cal.App.4th at p. 53.)

We reject father’s contention substantial evidence does not support the section 300, subdivision (j) finding, because the findings Alvin is at risk of abuse under section 300, subdivisions (b) and (d) are sufficient to support the finding under section 300, subdivision (j) that there is a substantial risk he will be abused “as defined in section 300, subdivision (a), (b), (d), (e), or (i)[.]” (See § 300, subd. (j).)<sup>7</sup>

## **DISPOSITION**

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.

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<sup>7</sup> As substantial evidence supports the jurisdictional findings, we reject father’s contention that the order removing Alvin from his custody must be reversed because the jurisdictional findings are not supported by substantial evidence.